IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Vineyard Vines, LLC,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 5:17-cv-242
v.	)	
	)	Jury Trial Demanded
Carolina Moon Graphics, LLC	)	
dba Moon Street USA,	)	
	)	
Defendant.	)	

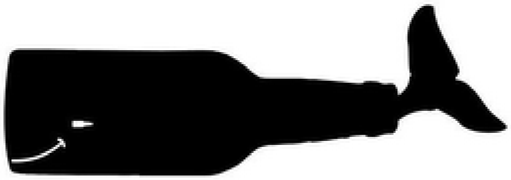
COMPLAINT

Plaintiff Vineyard Vines, LLC ("Vineyard Vines"), for its complaint against Defendant Carolina Moon Graphics, LLC dba Moon Street USA ("Carolina Moon"), alleges on personal knowledge as to its actions, and upon information and belief as to the actions of others, as follows:

NATURE OF THE ACTION

1. This action arises out of Carolina Moon's knowing and intentional mimicry of Vineyard Vines' iconic whimsical, smiling Whale Design trademark shown below.

More particularly, this is an action for trademark dilution, trademark infringement, unfair competition, and several related federal, state and common law causes of action arising from Carolina Moon's use of the designation shown below as a trademark for clothing.



PARTIES

2. Vineyard Vines is a Connecticut limited liability company having its principal place of business located at 181 Harbor Drive, Stamford, Connecticut 06902.

3. On information and belief, Carolina Moon Graphics, LLC ("Carolina Moon") is a limited liability company organized under the laws of North Carolina and has a physical and mailing address of 5959 Triangle Town Blvd., Raleigh, North Carolina 27614.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this case pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367.

5. This Court has personal jurisdiction over Carolina Moon because it is a resident of this judicial district, has committed tortious acts within this judicial district, has transacted business within this judicial district (including sales of the subject merchandise within this judicial district), and has otherwise made or established contacts within this judicial district sufficient to permit the exercise of personal jurisdiction by this Court over it.

6. Venue is proper within this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because Carolina Moon resides in this judicial district and is otherwise subject to

personal jurisdiction within this judicial district, and a substantial part of the events and injury giving rise to Vineyard Vines' claims is occurring within this judicial district.

VINEYARDS VINES' WHALE DESIGN TRADEMARK

7. In 1998, brothers Ian and Shep Murray set out to live the American dream and left their corporate jobs to create a line of whimsical men's neckties inspired by the colors and designs of Martha's Vineyard, a destination they loved to visit. The first 800 ties were delivered on July 3, 1998 and were sold out in the first week. As the popularity of the neckties grew, the Vineyard Vines brand was expanded to a full line of casual sportswear for men, women and children, accessories, and products for the home, all drawing inspiration from the relaxed lifestyle of Martha's Vineyard.

8. For nearly twenty (20) years, and since long prior to the acts of Carolina Moon complained of herein, Vineyard Vines has been engaged in manufacturing, distributing, offering for sale and selling a broad range of uniquely designed men's, women's and children's clothing and accessories. As such, Vineyard Vines has become a leader in the clothing and accessories industry in this country and is well known for its colorful, nautical and whimsical designs on its products. Probably the most well-known symbol of the Vineyard Vines brand is its fanciful whale design (the "Whale Design"), which was developed and first used by Vineyard Vines at least as early as September 1, 2003 and first registered with the United States Patent and Trademark Office ("USPTO") on July 19, 2005.

9. The signature Whale Design has become an iconic symbol representing the Vineyard Vines brand and is prominently used on a wide array of men's, women's and children's sportswear and accessories, as well as other related goods.

10. Vineyard Vines now operates approximately fifty (50) Vineyard Vines branded standalone retail and outlet locations in North Carolina and elsewhere throughout the United States and continues to expand its retail presence through additional prominent in-store and store-in-a-store facilities in many major retail stores, including Bloomingdales, Belk, Nordstrom, Saks Fifth Avenue and Island Pursuits, as well as in boutique clothiers throughout North Carolina and elsewhere throughout the United States. Vineyard Vines also promotes and offers its products for sale on its website, www.VineyardVines.com.

11. As a consequence of Vineyard Vines' longstanding and continuous use of its Whale Design mark, Vineyard Vines' business and merchandise have become closely associated with one another in the mind of the public so that the public in this country has come to recognize the business and merchandise of Vineyard Vines, at least in part, by the Whale Design. As such, Vineyard Vines enjoys substantial goodwill and a valuable reputation under the Whale Design trademark.

12. Because the Whale Design has a distinctive quality and has acquired special and particular significance and very valuable goodwill as an identifier of Vineyard Vines and its merchandise, Vineyard Vines has acquired proprietary rights in the Whale Design under the common law as a trademark and service mark for men's, women's and children's clothing and accessories, and for related goods and services. Those rights extend, without limitation, to the exclusive right to use the Whale Design nationwide on and in conjunction with such clothing goods and related merchandise and services.

13. Moreover, Vineyard Vines' Whale Design is the subject of several federal trademark and service mark registrations. Those registrations include, *inter alia*, U.S. Trademark Registration No. 2,969,692 which issued July 19, 2005 and pertains to the use of the Whale Design as a trademark for various clothing goods. That registration (a copy of which is attached hereto as Exhibit A) is valid, subsisting and incontestable.

CAROLINA MOON'S UNLAWFUL ACTIVITIES

14. On information and belief, Carolina Moon operates both a brick-and-mortar retail store and a website in which clothing, accessories and other merchandise are sold. The retail store is located at 5959 Triangle Town Blvd. in Raleigh, and the website is accessible via the URL http://www.MoonStreetUSA.com.

15. It came to Vineyard Vines' attention recently that Carolina Moon has been and is selling a line of shirts which incorporate a graphic element depicting prominently an unauthorized imitation of Vineyard Vines' Whale Design clothing trademark (the "Infringing Products"), which Carolina Moon identifies as its "Ale Whales" shirts. Images of some of the Infringing Products are depicted in Exhibit B hereto.

16. Not only is Carolina Moon prominently using a variant of Vineyard Vines' smiling whimsical whale (the "Carolina Moon Whale Mark") on clothing goods, but also Carolina Moon is using that variant *as a trademark* for clothing. In fact, through a related entity (Lost Wando Brand Management, LLC), an application (No. 87/412,889) has been filed recently in the U.S. Patent and Trademark Office to register the Carolina Moon Whale Mark *as a trademark* for use on shirts and other clothing goods. Still further, on its website (www.MoonShotUSA.com), Carolina Moon indicates that it plans to expand to include additional retail stores within and outside of North Carolina.

17. Carolina Moon's prominent display of the Carolina Moon Whale Mark on clothing is likely to impair the distinctiveness of Vineyard Vines' proprietary, federally registered Whale Design clothing mark. As such, that usage constitutes unlawful dilution of Vineyard Vines' famous mark by blurring.

18. Further, Carolina Moon's modification of the body of Vineyard Vines' Whale Mark into the silhouette of a beer bottle is likely to tarnish the wholesome image and reputation associated with Vineyard Vines' famous Whale Design Mark. As such, Carolina Moon's usage also constitutes unlawful dilution by tarnishment of Vineyard Vines' Whale Design Mark.

19. Still further, because of the striking similarities between Vineyard Vines' Whale Design trademark and the Carolina Moon Whale Mark appearing prominently on the Infringing Products, members of the public are likely to be initially interested in the Infringing Products upon encountering them for sale by Carolina Moon. Thus, such mimicry is likely to lead to initial interest confusion or point-of-sale confusion as to the source, sponsorship or other commercial affiliation of the Infringing Products with Vineyard Vines and its clothing goods.

20. Additionally, because of such similarities, members of the public, who encounter the Infringing Products being worn by customers of Carolina Moon, are likely to experience post-sale confusion as to the source, sponsorship or other commercial affiliation of the Infringing Products with Vineyard Vines and its clothing goods.

21. The activities of Carolina Moon complained of herein constitute willful dilution and infringement of Vineyard Vine's proprietary rights in the Whale Design mark and have continued in spite of Carolina Moon's knowledge that the use of such

proprietary mark, or any colorable imitation thereof, was and remains in direct contravention of the exclusive proprietary rights of Vineyard Vines.

22. Carolina Moon's unlawful activity results in irreparable harm and injury to Vineyard Vines in that, among other things, it: deprives Vineyard Vines of its absolute right to determine the manner in which its image is presented to the public through the promotion and sale of goods bearing reproductions or imitations of its mark; deceives and confuses the public as to the origin and sponsorship of such goods either when members of the public initially encounter the Infringing Products, and/or at the point-of-sale of the Infringing Products, and/or when the Infringing Products are encountered in post-sale situations; wrongfully preys upon and cashes in on the reputation and commercial value of Vineyard Vines as well as its exclusive rights in the proprietary Whale Design mark; and irreparably harms and injures, or threatens to harm and injure, the reputation of Vineyard Vines for providing quality goods.

23. Because of Carolina Moon's unlawful activities, on May 2, 2017, Vineyard Vines' attorney sent via certified mail to Carolina Moon the demand letter and materials depicted in Exhibit B hereto. Notwithstanding Carolina Moon's receipt of that demand letter, Carolina Moon failed to respond in any manner. Subsequently, Vineyard Vines' attorney again sent the demand letter to Carolina Moon, via email on May 13, 2017. However, as of the filing of this lawsuit, there has been no response from Carolina Moon. Thus, Carolina Moon's unlawful activities and the multiple failures of Carolina Moon to respond to Vineyard Vines have necessitated the filing of this lawsuit.

Count I

DILUTION OF FAMOUS TRADEMARK
15 U.S.C. § 1125 (c) (§ 43(c) of the Lanham Act)

24. Vineyard Vines repeats and realleges the contents of Paragraphs 1-23 as thought fully set forth herein.

25. The Whale Design clothing mark is a famous trademark under 15 U.S.C. § 1125(c)(2)(A), in that it is widely recognized by the general consuming public of the United States as a designation of the source of Vineyard Vines' clothing. The Whale Design clothing mark became famous long prior to Carolina Moon's unlawful use of colorable imitations thereof, as alleged herein.

26. Carolina Moon's use of an imitation of the Whale Design clothing mark, in connection with the unauthorized sale in the United States of Infringing Products, is likely to dilute Vineyard Vine's famous Whale Design clothing mark, in violation of § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), by: (i) lessening the capacity of the Whale Design clothing mark to identify and distinguish Vineyard Vines exclusively as the source of products and services in the United States bearing or provided under the famous Whale Design clothing mark: and (ii) by harming the reputation and goodwill of the famous Whale Design clothing mark.

27. Carolina Moon's unauthorized use of an imitation of the Whale Design clothing mark in connection with the sale in the United States of Carolina Moon's Infringing Products is intended and has the effect of trading on Vineyard Vines' reputation and causing dilution of the famous Whale Design clothing mark.

28. Carolina Moon's trademark dilution as herein alleged has injured and will continue to injure Vineyard Vines in that Vineyard Vines has suffered and will continue

to suffer damage to its reputation and customer goodwill as a direct and proximate result of Carolina Moon's illegal conduct, unless such unlawful conduct is enjoined by this Court. In addition, Carolina Moon has been unjustly enriched by reason of its acts of trademark dilution in that Carolina Moon has achieved sales and profits as a direct and proximate result of the illegal conduct.

29. Vineyard Vines is entitled to recover all damages sustained as a result of Carolina Moon's actions, all profits realized by Carolina Moon through the unlawful use of an imitation of Vineyard Vines' Whale Design clothing mark and in connection with Carolina Moon's offering for sale and sale of the Infringing Products via Carolina Moon's retail store and website.

30. Carolina Moon's actions have been willful and deliberate, entitling Vineyard Vines to recover treble damages and/or profits and an award of reasonable attorneys' fees against Carolina Moon.

Count II

INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARK 15 U.S.C. § 1114 (§ 32 of the Lanham Act)

31. Vineyard Vines repeats and realleges the contents of Paragraphs 1-30 as though fully set forth herein.

32. Carolina Moon's use in commerce of an imitation of the federally registered Whale Design mark in connection with the promotion, offering for sale, sale and distribution of clothing goods is likely to cause confusion, or to cause mistake or deceive customers, potential customers, and/or other members of the public.

33. Such acts constitute infringement of a federally registered trademark in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

34. The aforesaid acts of Carolina Moon have injured Vineyard Vines in an

amount to be determined at trial.

35. The aforesaid acts of Carolina Moon have also caused irreparable harm to Vineyard Vines and, unless enjoined by this Court, will continue to cause irreparable damage, loss and injury to Vineyard Vines, for which Vineyard Vines has no adequate remedy at law.

Count III

FEDERAL TRADEMARK INFRINGEMENT
15 U.S.C. § 1125(a)(1)(A) (§ 43(a)(1)(A) of the Lanham Act)

36. Vineyard Vines repeats and realleges the contents of Paragraphs 1-35 as though fully set forth herein.

37. Carolina Moon's use in commerce of an imitation of Vineyard Vines' Whale Design trademark is likely to cause confusion, or to cause mistake or deceive consumers and other members of the public as to the affiliation, connection, or association of that imitative designation with Vineyard Vines or as to the origin, sponsorship or approval of Carolina Moon's goods by Vineyard Vines.

38. Such acts constitute violations of § 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

39. The aforesaid acts of Carolina Moon have injured Vineyard Vines in an amount to be determined at trial.

40. The aforesaid acts of Carolina Moon have also caused and, unless enjoined by this Court, will continue to cause, irreparable damage, loss and injury to Vineyard Vines, for which Vineyard Vines has no adequate remedy at law.

Count IV

COMMON LAW UNFAIR COMPETITION

41. Vineyard Vines repeats and realleges the contents of Paragraphs 1-40 as if fully set forth herein.

42. Carolina Moon has engaged in unfair competition with Vineyard Vines in violation of the common law of North Carolina and other states, by advertising, promoting, offering and selling products using an imitation of Vineyard Vines' Whale Design clothing trademark, and by trading upon the goodwill established by Vineyard Vines and thereby misappropriating the benefits of substantial effort and money expended by Vineyard Vines in establishing its rights in its clothing trademarks and the goodwill and reputation of Vineyard Vines.

43. The aforesaid acts of Carolina Moon have damaged Vineyard Vines in an amount to be determined at trial.

44. The aforesaid acts of Carolina Moon have also caused Vineyard Vines irreparable injury and, unless enjoined by this Court, will continue to cause irreparable damage, loss and injury to Vineyard Vines, for which Vineyard Vines has no adequate remedy at law.

Count V

VIOLATION OF NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT (N.C. Gen. Stat. §§ 75-1.1, *et seq.*)

45. Vineyard Vines repeats and realleges the allegations of Paragraphs 1-44 as if fully set forth herein.

46. Carolina Moon's activities as described above:

(a) Are immoral, unethical, oppressive, unscrupulous, and offend the ethos of the marketplace;

(b) Constitute an unfair method of competition in or affecting commerce and are unfair and deceptive acts or practices in and affecting commerce;

(c) Cause a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or association of the Infringing Products with Vineyard Vines and its clothing goods; and

(d) Dilute by blurring and by tarnishment the distinctiveness of the Vineyard Vines Whale Design Mark and the reputation and goodwill associated with Vineyard Vines and its famous mark.

47. Vineyard Vines has no adequate remedy at law for Carolina Moon's activities in violation of N.C. Gen. Stat. § 75-1.1, and, if Carolina Moon's activities are not enjoined, will continue to suffer irreparable harm and injury to Vineyard Vines' goodwill and reputation.

JURY DEMAND

Vineyard Vines demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Vineyard Vines respectfully requests the following relief:

A. Preliminary and permanent injunctions prohibiting Carolina Moon, its employees, officers, directors, affiliated businesses, successors and assigns, and all persons acting by, through, under or in active concert or in participation with or controlled, either directly or indirectly, by any of them, from using the whale designations which have appeared on the Infringing Products, and from using any other colorable imitations of Vineyard Vines' Whale Design trademark in connection with the manufacturing, packaging, labeling, importation, exportation, advertising, promoting, marketing, offering, selling or distribution of clothing goods and any other goods in the United States;

B. Preliminary and permanent injunctions requiring Carolina Moon to remove all use of the dilutive and infringing designations from signage, websites, sales aids, advertisements, and any other promotional material or medium;

C. An order requiring the surrender to Vineyard Vines of all goods and other materials in Carolina Moon's possession, custody or control bearing the dilutive and infringing designations, for the destruction of such goods and materials by Vineyard Vines, and requiring further the filing and service of a certified report by Carolina Moon, identifying and attesting to the surrender of those goods and other materials in such particular details as the Court shall deem appropriate;

D. An accounting for all profits derived by Carolina Moon and its affiliated businesses from such unlawful acts;

E. An award of such monetary remedies in an amount sufficient to compensate Vineyard Vines for losses it has sustained as a consequence of Carolina Moon's unlawful acts, as well as the profits of Carolina Moon attributable to such infringements and dilution;

F. An award of Vineyard Vines' damages, including treble damages, costs and attorneys' fees for Carolina Moon's acts of trademark dilution and infringement, pursuant to 15 U.S.C. §§ 1051, *et seq.*, particularly including 15 U.S.C. §§ 1114 and 1125(a) and (c);

G. All such other and further relief as this Court may deem just and proper.

/s/ Jitendra Malik
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